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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KESHAV BHATTARAI; SAJJAN PANDEY;
SUMNIMA THAPA; DONALDO POSADAS
CACERES; SORAYDA RODRIGUEZ
MOTIÑO; DENIS MOLINA CHAVEZ; S.S.,
individually and on behalf of others similarly
situated; and G.D.P., individually and on
behalf of others similarly situated,

Plaintiffs,

v.

KIRSTJEN NIELSEN, in her official capacity
as Secretary of Homeland Security; ELAINE
C.DUKE, in her official capacity as Deputy
Secretary of Homeland Security; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; and UNITED STATE OF
AMERICA

Defendants.

Case No. 3:19-cv-00731-EMC

STIPULATION TO STAY PROCEEDINGS

The Honorable Edward M. Chen

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Pursuant to Local Rule 7-12, the parties hereby stipulate to, and respectfully request, on the terms set forth in this stipulation, a stay of proceedings on the merits of Plaintiffs' claims pending either (a) final disposition of Defendants' appeal of the preliminary injunction in *Ramos v. Nielsen*, No. 18-01554, including through any additional appellate channels in which relief may be sought, or (b) other order of this Court.

The basis for this stipulation is as follows:

1. On April 26, 2018, the Secretary of Homeland Security announced the termination of Temporary Protected Status ("TPS") for Nepal effective June 24, 2019. *See* 83 FR 23705 (May 22, 2018). On May 4, 2018, the Secretary of Homeland Security also announced the termination of TPS for Honduras effective January 5, 2020. *See* 83 FR 26074 (June 5, 2018). Plaintiffs have brought claims under the Administrative Procedure Act and the Fifth Amendment relating to those terminations. Defendants believe the Court lacks jurisdiction over this matter and, otherwise, believe the terminations were conducted in accordance with all applicable laws.

2. Plaintiffs' claims are very similar to the claims raised by the plaintiffs in *Ramos*, relating to termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan. Defendants believe the Court in *Ramos* lacks subject matter jurisdiction and that the terminations at issue in that case were conducted in accordance with all applicable laws.

3. On October 3, 2018, in *Ramos*, this Court issued an order preliminarily enjoining and restraining Defendants "from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, implementation and/or enforcement of the decisions to terminate [Temporary Protected Status ("TPS")] for Sudan, Haiti, El Salvador, and Nicaragua pending resolution of this case on the merits." *See Ramos* Order [ECF No. 128] at 42. Further, this Court ordered Defendants to report within 15 days on the "administrative steps" Defendants would take or have taken to comply with the preliminary injunction. *See id.* at 43.

4. On October 11, 2018, Defendants appealed the preliminary injunction in *Ramos* to the U.S. Court of Appeals for the Ninth Circuit. *Ramos* [ECF No. 129]. Briefing is now complete, and the parties expect the case to be scheduled for argument in the coming months.

5. Further, on October 23, 2018, pursuant to this Court’s Order, Defendants reported on the administrative steps they had undertaken and planned to undertake in response to the *Ramos* preliminary injunction. *See, e.g., Ramos*, Declaration of Donald Neufeld [ECF No. 135-1]. In addition, Defendants stipulated that TPS for the four countries would remain in effect during the pendency of the appeal. *See Ramos*, Stipulation to Stay Proceedings [ECF No. 138] ¶ 6(c). Defendants also stated that, in the event the preliminary injunction were reversed on appeal, any termination of TPS for Sudan, Haiti, El Salvador, and Nicaragua would go into effect no sooner than 120 days from the issuance of any appellate mandate to this Court. *See Ramos*, Declaration of Donald Neufeld [ECF No. 135-1] ¶ 10; *Ramos*, Stipulation to Stay Proceedings [ECF No. 138] ¶ 6.

6. The parties’ disputes in this case are similar to, and will be informed by, the disputes being litigated in *Ramos*. The interests of justice and judicial economy would be served by treating the decisions terminating TPS for Honduras and Nepal similarly to the decisions at issue in *Ramos* during the pendency of the *Ramos* appeal. Specifically, Defendants hereby stipulate that they will not “engag[e] in, commit[], or perform[], directly or indirectly, by any means whatsoever, implementation and/or enforcement of the decisions to terminate [Temporary Protected Status (“TPS”)] for” Honduras and Nepal, pending resolution of the appeal in *Ramos*, *see Ramos*, Order [ECF No. 128] at 42, or by other order of the Court. Defendants reserve the right to move the Court to lift this stay if the appellate decision in *Ramos* suggests a basis on which to distinguish the Honduras and Nepal TPS terminations from the TPS terminations at issue in *Ramos*.

7. Defendants further stipulate that they will take steps with respect to TPS holders from Honduras and Nepal equivalent to those that they agreed to take with respect to the TPS holders at issue in *Ramos*. These include that TPS for Honduras and Nepal will remain in effect during the pendency of this stay, that DHS will periodically issue Federal Register Notices automatically extending by nine-months the appropriate TPS-related documentation for TPS beneficiaries from Honduras and Nepal, with the first such notice to issue for TPS beneficiaries from Nepal approximately forty five (45) days prior to June 24, 2019, and for TPS beneficiaries from Honduras approximately forty five (45) days prior to January 5, 2020. These steps also

1 include in adjudicating late re-registration notices for TPS holders from Honduras and Nepal,
 2 USCIS adjudicators will give presumptive weight to whether the delay in filing for re-registration
 3 was due in whole or part to the termination notices. *See Ramos*, Stipulation to Stay Proceedings
 4 [ECF No. 138] ¶ 6; Declaration of Donald W. Neufeld ¶¶ 9, 16. Further, the parties agree that, in
 5 the event the *Ramos* preliminary injunction is reversed on appeal, any termination of TPS for
 6 Honduras or Nepal will go into effect no sooner than 120 days from the issuance of any appellate
 7 mandate to this Court or, to the extent Defendants move this Court to vacate the stay, 180 days
 8 from *vacatur* of the stay by this Court. In addition, for TPS beneficiaries subject to this stipulation,
 9 Defendants will take measures consistent with 8 U.S.C. § 1254a(c) and the *Ramos* agreement to
 10 ensure the beneficiaries' continued TPS eligibility and the continued validity of TPS-related
 11 documentation. *See Ramos*, Declaration of Donald Neufeld [ECF No. 135-1]; *Ramos*, Stipulation
 12 to Stay Proceedings [ECF No. 138].

13 8. The parties also stipulate to a stay of the proceedings in this case. Therefore, in
 14 addition to staying production of the administrative records in this case, neither side will seek
 15 discovery during the pendency of that stay. During the stay, Plaintiffs will seek no relief from this
 16 Court beyond any relief needed to enforce the terms of this agreement, and Defendants will not
 17 move to dismiss this case.

18 9. Both sides reserve the right to pursue any arguments in support of their positions
 19 upon expiration of this agreement, including but not limited to Defendants' arguments that this
 20 Court lacks subject matter jurisdiction, that, if there is jurisdiction, then review should be limited
 21 to the administrative record, and any other argument that either side could have made at this stage
 22 of the litigation had they not agreed to this stipulation and stay.

23 10. This Court has the authority to issue a stay of proceedings pending the appeal in the
 24 related *Ramos* case: "[T]he power to stay proceedings is incidental to the power inherent in every
 25 court to control the disposition of the causes of its docket with economy of time and effort for
 26 itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).

27 11. Accordingly, Plaintiffs and Defendants, through counsel, stipulate and request the
 28 Court to order as follows:

1 (a) Further proceedings on the merits of this case, including discussions about,
2 and entry of, a schedule for resolving Defendants' motion to dismiss and Plaintiffs' motion
3 for preliminary injunction, shall be stayed pending final resolution of Defendants' appeal of
4 the preliminary injunction in *Ramos*, including through any additional appellate channels in
5 which relief may be sought, or by other order of this Court.

6 (b) In the event that the *Ramos* preliminary injunction is affirmed in whole or
7 part after all appellate channels have been exhausted, the parties anticipate resuming
8 litigation in this Court. In the event that the preliminary injunction is reversed on a ground
9 that does not foreclose further discovery, nothing in this agreement forecloses Plaintiffs
10 from initiating discovery forthwith, nor does anything in this agreement foreclose
11 Defendants from opposing such discovery. Plaintiffs need not wait until the mandate issues
12 before initiating discovery in such a situation.

13 (c) Following the conclusion of the appeal of the preliminary injunction, TPS
14 will remain in effect for Honduras and Nepal for a minimum of the latter of a) 120 days
15 following the issuance of any mandate to the district court, or b) the Secretary's previously-
16 announced effective date for the termination of TPS designations for each individual
17 country (Nepal – June 24, 2019; Honduras – January 5, 2020). To the extent that
18 Defendants move to vacate the stay in light of an appellate decision affirming the
19 preliminary injunction in *Ramos* that suggests a basis on which to distinguish the Honduras
20 and Nepal TPS terminations from the TPS terminations at issue in *Ramos*, TPS will remain
21 in effect for Honduras and Nepal for at least 180 days following an order of this Court
22 vacating the stay.

23 (d) As in *Ramos*, nothing in this stipulation prevents Plaintiffs from presenting
24 to the Court for resolution any issues concerning Defendants' compliance with Defendants'
25 plan to implement the *Ramos* preliminary injunction, *Ramos*, [ECF No. 135-1], or with the
26 terms of this stipulation. Should either side for any reason fail to comply with the terms of
27 this stipulation, each side reserves the right to request that the Court lift this stay. The
28

1 parties, however, shall work in good faith to resolve the matter before they may petition the
2 Court for further guidance.

3 12. Following the exhaustion of all appeals in *Ramos* or order of this Court vacating the
4 stay, the parties plan to file a status report with this Court within 14 days of the issuance of the
5 mandate to this Court.

6
7 SO STIPULATED this 12th day of March, 2019.

8 Respectfully submitted,

9 SIDLEY AUSTIN LLP

10 /s/ Alycia A. Degen

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CIVIL LOCAL RULE 5-1(i) ATTESTATION

Pursuant to Local Rule 5-1(i)(3), regarding signatures, Alycia A. Degen hereby attests that concurrence in the filing of this document has been obtained from counsel for Defendants.

/s/ Alycia A. Degen

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2019

The Honorable Edward M. Chen
United States District Judge